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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/774,161

02/06/2004

D. Ryan Breese

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EXAMINER

VARGOT, MATHIEU D

ART UNIT

PAPER NUMBER

1732

MAIL DATE

DELIVERY MODE

07/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/774,161	Applicant(s) BREESE, D. RYAN	
	Examiner Mathieu D. Vargot	Art Unit 1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1.The prosecution of the case has been reopened.

2.The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Harbourne (see column 6, lines 1-28).

Harbourne teaches extrusion of a blown PE film, the film being oriented in the machine direction by using a draw down ratio of 40:1. I.e., the die gap is 1.016 mm and the final film thickness is 25.4 microns, or .0254 mm. Samples A, C and D have densities within the ranges set forth in instant claims 3-5. Hence, the instant method is taught in Harbourne. The applied reference however does not explicitly teach that the film produced has the instant 1% secant MD modulus as set forth in instant claims 1 and 14 or the 1% secant TD modulus of instant claim 2. However, **since the instantly claimed method is met in the reference, it is submitted that the instant modulus values are inherent in the final film.** I.e., there are no differences set forth in the instant method that would lead one to conclude otherwise. It is submitted that the film claims 14-19 are also met in Harbourne. Note that product by process claims must distinguish structurally over the prior art. There is nothing set forth in instant claims 16-19 that is not met structurally by Harbourne.

2.Claims 1, 2 and 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Erderly (see col. 9, line 3).

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Erderly, already of record, teaches making blown film employing a polyethylene and discloses that the draw down ratio would be 10:1 to 60:1. Essentially, Erderly is being applied for the same reasons as Harbourne in paragraph 1, supra, with respect to the instant method and film claims. I.e., since the instant method is met, it is submitted that the instant film modulus property is inherent.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-13, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harbourne, which teaches the basic claimed method and film as set forth in paragraph 1, supra, the reference essentially lacking a showing of the instant molecular weights. It is submitted that PE of the instant molecular weights are conventional in the art and such would have been obvious weights for the polyethylenes of Harbourne dependent on the exact polymerization method employed. Additionally, if there are any structural differences for the films dependent on exact molecular weight of the resin, claims 18 and 19 have been further rejected under 103. Since the selection of the appropriate molecular weight of the resin would have been obvious, so too would any differences in the film due to such a selection.

4. Claims 3-15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erderly which teaches the basic claimed method and film as set forth in paragraph 2, supra, the reference essentially lacking a showing of the instant

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densities and molecular weights. It is submitted that PE of the instant densities and molecular weights are conventional in the art and such would have been obvious material selections for the polyethylenes of Erderly dependent on the exact polymerization method employed. Additionally, if there are any structural differences for the films dependent on exact density and molecular weight of the resin, claims 17 through 19 have been further rejected under 103. Since the selection of the appropriate density and molecular weight of the resin would have been obvious, so too would any differences in the film due to such a selection.

5. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

Upon reconsideration, the prosecution of the case has been reopened. Note that if a reference teaches a method, then the properties of the final product made by the method are inherent. It is up to applicant to show why these properties are not inherent, if in fact they are not.


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
June 21, 2007


Mathieu D. Vargot
Primary Examiner
Art Unit 1732

6/21/07